



County of Los Angeles  
**CHIEF ADMINISTRATIVE OFFICE**

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DAVID E. JANSSEN  
Chief Administrative Officer

Board of Supervisors  
GLORIA MOLINA  
First District

YVONNE BRATHWAITE BURKE  
Second District

ZEV YAROSLAVSKY  
Third District

DON KNABE  
Fourth District

MICHAEL D. ANTONOVICH  
Fifth District

**REVISED**

February 10, 2004

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, CA 90012

Dear Supervisors:

**USE OF TERMINATION PAY TO PURCHASE  
RETIREE PENSION SERVICE CREDITS**

**IT IS RECOMMENDED THAT YOUR BOARD:**

1. Approve the accompanying resolution that allows contributions on a pre-tax basis to the pension plan from termination pay (also known as time certificates) for the purchase of qualified retiree service credit(s) when an employee voluntarily signs an irrevocable agreement to do so. These contributions will be designated as employer contributions and will be in lieu of payments that would otherwise be directed to the affected employees as termination pay.

**PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION**

On December 16, 2003, your Board approved a local option measure (AB55) that permits employees to purchase up to five additional years of retirement service credit by making payment to the retirement association, LACERA, for the cost of the credit. Approval of this resolution will allow employees to use termination pay to purchase AB55 service credit. This enhances the economic feasibility of the AB 55 choice since the cost of the purchase would be excluded from the employee's gross income under Section 414(h) (2) of the Internal Revenue Code. This is an employee cost.

**Implementation of Strategic Plan Goals**

The actions recommended in this letter promote workforce excellence by resolving workplace issues while maintaining financial responsibility.

### **FISCAL IMPACT/FINANCING**

Under the terms of AB 55, the cost to purchase elective retirement service credit is borne in full by the employee. There are no County costs associated with this recommendation other than de minimus costs related to minor systems changes.

### **FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

County Counsel and tax counsel from Jones Day Reavis & Pogue have reviewed Section 414(h)(2) of the Internal Revenue Code and Section 31581.2 of the Government Code (that permits the Board of Supervisors to pick-up any portion of contributions required to be paid by an employee) and have determined that upon an irrevocable agreement with the employee this exclusion from gross income appears permissible. Jones Day will be seeking a private tax ruling from the Internal Revenue Service (IRS) on behalf of the County to confirm this conclusion. The IRS has issued several private letter rulings to other taxpayers based on very similar programs. These private rulings, however, are binding with regard to only the parties that requested them.

Until such ruling is received, each employee desiring to elect to contribute pre-tax termination pay (the time certificate) toward the purchase of qualified retiree service credit will be advised that a final IRS tax ruling has not been received. The employee will be required to sign a waiver indicating that he or she understands that, in the unlikely event of an unfavorable IRS ruling, the pre-tax basis of the contribution may be disqualified. In that event, the employee may be required to pay taxes on the contribution and might not be able to otherwise pay the entire cost of the additional service credit, thereby resulting in a recalculation and reduction of the employee's retirement allowance.

LACERA, Auditor–Controller, and departmental personnel will be working together to administer the irrevocable employee agreement for termination pay.

Respectfully submitted,



DAVID E. JANSSEN  
Chief Administrative Officer

DEJ:WGL  
CO:lg

Attachments

c: Auditor-Controller  
County Counsel

1  
2 **BOARD OF SUPERVISORS**  
3 **OF THE COUNTY OF LOS ANGELES**  
4

5 **RESOLUTION**  
6

7 WHEREAS, Section 414(h)(2) of the Internal Revenue Code ("IRC") permits employee  
8 contributions to a governmental pension plan to be "picked up" by the employer -- i.e., although  
9 designated under the plan as employee contributions, the contributions are (i) paid by the  
10 employer in lieu of the contributions that otherwise would be made by the employee pursuant to  
11 a one-time, binding and irrevocable election which precludes the employee from receiving the  
12 contributed amounts directly in cash and, (ii) are thus excluded from the gross income of the  
13 employee; and  
14

15 WHEREAS, in accordance with IRC Section 414(h)(2), Section 31581.2 of the  
16 Government Code permits the Board of Supervisors to "pick up" any portion of contributions  
17 required to be paid by a member to the Los Angeles County Employees Retirement Association  
18 ("the Plan"); and  
19

20 WHEREAS, effective February 1, 2004, the Board of Supervisors adopted Sections  
21 31485.7 and 31658 of the Government Code authorizing active members of retirement systems  
22 in Los Angeles County subject to the County Employees Retirement Law of 1937 to receive up  
23 to five (5) years of service credit for additional retirement credit ("ARC") by making a lump sum  
24 payment or by making installment payments over a period of up to ten (10) years, subject to  
25 specified statutory conditions, to the Plan; and  
26

27 WHEREAS, such payment or payments to pay the full cost of ARC are required to be  
28 paid by the member; and

1 WHEREAS, upon termination of employment, County employees may receive cash in  
2 connection with the redemption of unused accumulated vacation, sick leave, annual leave,  
3 overtime, holiday time, and other accumulated benefits, as provided under the Los Angeles  
4 County Code ("Termination Pay"); and

5  
6 NOW THEREFORE, BE IT RESOLVED that a retiring or terminating employee shall be  
7 permitted to make an irrevocable election not to receive Termination Pay in cash and in lieu  
8 thereof to have the Board of Supervisors pick up and contribute all or a designated portion of the  
9 employee's Termination Pay towards ARC as authorized pursuant to Sections 31485.7 and 31658  
10 of the Government Code, all as provided herein:

11  
12 (a) The employee must elect, by executing a one-time, binding and irrevocable  
13 agreement with the County (the "Pick Up Election"), on or before a date that is a specified period  
14 (the "Election Period") prior to the employee's retirement or termination from employment  
15 (whichever is earlier), to have all or a designated portion of his or her Termination Pay  
16 contributed to the Plan as a pick up under IRC Section 414(h)(2);

17  
18 (b) For any employee retiring or terminating on or after June 1, 2004, the Election  
19 Period is a period that is ninety (90) days prior to the employee's retirement or termination from  
20 employment (whichever is earlier);

21  
22 (c) For any employee retiring or terminating prior to June 1, 2004, the Election  
23 Period is thirty (30) days prior to the employee's retirement or termination from employment  
24 (whichever is earlier). This special Election Period is adopted to accommodate, on a one-time  
25 only basis, those employees retiring or terminating on or before May 31, 2004, following  
26 adoption of Sections 31485.7 and 31658 of the Government Code effective February 1, 2004;

1 (d) The Pick Up Election is not effective if the employee retires or terminates  
2 from employment before the applicable Election Period expires;

3  
4 (e) The employee contributions of Termination Pay to purchase ARC, although  
5 designated as employee contributions, will be paid by the County in lieu of contributions by the  
6 employee;

7  
8 (f) After executing the Pick Up Election with respect to the pick up of these  
9 contributions, the employee may not elect to receive such contributions directly instead of having  
10 them paid by the County to the Plan;

11  
12 (g) The contribution of Termination Pay must be paid to the Plan within a  
13 reasonable period after the employee's retirement or termination from employment, not to exceed  
14 thirty (30) days;

15  
16 (h) The effective date of the pick up by the County will be the date the applicable  
17 Election Period expires following the employee's execution of the Pick Up Election, and the pick  
18 up applies only to contributions made after this effective date;

19  
20 (i) The Pick Up Election shall state its effective date. Additionally, it shall  
21 provide that the employee authorizes the appropriate deduction from Termination Pay for the  
22 purposes of having it picked up by the County and paid directly to the Plan, and that the  
23 employee understands and acknowledges the following: (1) the Pick Up Election is binding and  
24 irrevocable; (2) the employee cannot receive cash in lieu of having the contribution made to the  
25 Plan once the Pick Up Election is executed; (3) the Pick Up Election is not effective if the  
26 employee retires or terminates before the applicable Election Period expires; and (4) the Plan will  
27 not accept direct payments (including pre-payments) to purchase ARC while the Pick Up  
28 Election is effective.

1 BE IT FURTHER RESOLVED that, as provided in Section 31581.2 of the Government  
2 Code, this resolution shall not create any vested rights in any member under the Plan, and the  
3 Board of Supervisors may amend or repeal this resolution at any time.

4  
5 BE IT FURTHER RESOLVED, that as a condition to entering the Pick Up Election, the  
6 County shall require the employee to execute a release of the County from liability in  
7 substantially the form attached hereto for any adverse consequences that may result if the IRS or  
8 a court determines that a contribution made pursuant to the Pick Up Election does not qualify as  
9 a "picked up" contribution under IRC Section 414(h)(2).

10  
11 I DO HEREBY CERTIFY that at a regular meeting of the Board of Supervisors of the  
12 County of Los Angeles on the \_\_\_\_ day of \_\_\_\_\_, 2004, the foregoing Resolution was  
13 adopted.

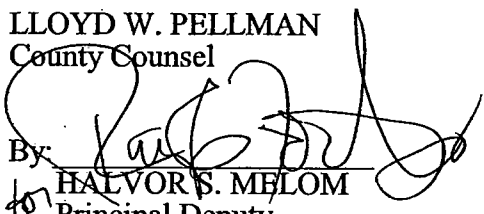
14  
15 IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Board  
16 of Supervisors of the County of Los Angeles this \_\_\_\_, day of \_\_\_\_\_, 2004.

17  
18 VIOLET VARONA-LUKENS  
19 Executive Officer-Clerk of the  
20 Board of Supervisors  
21 of the County of Los Angeles

22 By: \_\_\_\_\_  
Deputy

23 APPROVED AS TO FORM:

24 LLOYD W. PELLMAN  
25 County Counsel

26 By:   
27 HALVOR S. MELOM  
Principal Deputy

## RELEASE

I understand that, although the contribution authorized by the attached Payroll Deduction Authorization Agreement (the "Payroll Agreement"), is intended to qualify as a "picked up" contribution not subject to income tax under Internal Revenue Code ("IRC") Section 414(h)(2), the County has not yet received a ruling from the Internal Revenue Service ("IRS") on this issue. The County intends to seek a private letter ruling from the IRS in the future that the contribution made pursuant to the Payroll Agreement does qualify as a "picked-up" contribution under IRC Section 414(h)(2). I understand that, although the IRS has issued favorable private letter rulings to other taxpayers based on similar programs, these rulings are not binding and the IRS may nevertheless conclude that the contribution authorized by the Payroll Agreement does not qualify as a "picked-up" contribution.

I also understand and agree that, if the IRS concludes that the contribution covered by the Payroll Agreement is NOT a "picked up" contribution: (1) the contribution under the Payroll Agreement may be subject to income tax as well as interest and penalties thereon; (2) I may need to certify that the additional retirement credit ("ARC") that I agreed to purchase corresponds to actual service, performed for another employer, that is not otherwise recognized under the County retirement system; and (3) if I cannot provide the certification under (2), the amount of contributions I can make to purchase ARC may be limited under IRC 415, which may result in a refund of my contributions and a recalculation and reduction of my retirement allowance.

I understand that neither this Release nor the Payroll Agreement constitute tax advice and acknowledge that I am on notice that I should consider obtaining my own legal and/or tax advice before executing either the Release or Payroll Agreement.

By executing this Release, I acknowledge that I have read and understand the foregoing, and, as a condition of the County entering the Payroll Agreement with me, I agree to release the County from liability for any losses, costs, expenses, penalties or payments incurred by Member as a result of any of the potential adverse consequences described in this Release or that may otherwise result from a determination by the IRS or a court that the contribution made pursuant to the Payroll Agreement is not a "picked-up" contribution under IRC Section 414(h)(2).

MEMBER

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Approved by: \_\_\_\_\_

COUNTY OF LOS ANGELES